86-1948

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

HENRY ANDERSON, Appellant,

V.

OREGON STATE BAR, DONALD W. McEWEN, JANICE M. STEWART, JOSEPH J. HANNA, jr., DEAN P. GISVOLD, ROBERT D. RANKIN, PEGGY S. FORAKER, GENE C. ROSE, ANTHONY YTURRI, CARL BURNHAM, jr., Appellees.

ON APPEAL FROM THE

UNITED STATES COURT OF APPEALS NINTH CIRCUIT

JURISDICTIONAL STATEMENT

Henry Anderson
676 Covey Road
Valley Springs
Ca. 95252
Appellant
(no phone)

24 pp

QUESTIONS PRESENTED

Whether non-elected judges of the U.S. District Court of Oregon have authority to invalidate Acts of Congress through custom, usage and subterfuge?

Whether judges of the Ninth Circuit Court of Appeals have authority to ratify the unconstitutional acts of the District Court?

Whether judges of the U.S. District Court have authority to invalidate Acts of Congress ordering "FREEDOM OF CHOICE" be given parties in Exhibits 1A and 1B?

With no hearings having been held at any time by the District Court Judges, how can those arbitrary, illegal procedures qualify as DUE PROCESS OF LAW & EQUAL PROTECTION OF THE LAWS?

How can defendant Oregon State Bar, an inanimate fictitious creation make any statements contrary to its binding rules?

Whether Judge Panner of the District Court has authority to deprive appellant of the

mandatory protection provisions of FRCP Rule 16?

Whether judges of the U.S. Court of Appeals have authority to overrule prior decisions of 9th Circuit Court of Appeals forbidding coercion of parties by judges forcing parties to use magistrates?

What authnority do defendants have to unbind themselves from the binding commands of Oregon Rev. Stat. Secs. 9.460 & 9.490?

What authority does defendant Donald W. McEwen have to fabricate his sworn & subscribed affidavit based on hearsay, & present it to a court as evidence?

What authority does defendant Carl Burnham have to violate the INVIOLATE provisions of the Oregon State Constitution?

Each of the defendants has taken an oath to support the U.S. Constitution and laws. What authority do they have to ignore and act contrary to that Constitution and those laws?

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OFFICIAL and UNOFFICIAL REPORTS

Exhibits 1A & 1B are copies of the Notice sent to appellant by the Court Clerk showing the "FREEDOM OF CONSENT" ordered by Congress for the benefit of the parties.

Exhibit 2 is a copy of the civil minutes ordered by the anonymous calendar management committee invalidating the Act of Congress by custom & usage & subterfuge of the group acting for the district court judges.

Exhibit 3, is a copy of appellant's objections to the use of the magistrate.

Exhibit 4 is a copy of the order of dismissal signed by the district court judge.

The Order of Oct. 6, 1986, was the final Order of the Appeals Court.

Appellant filed a Notice of Appeal dated October 11, 1986. In researching the laws, appellant found a difference in the format of Notices of Appeal, acting on the difference, appellant revised his Notice of Appeal and sent copies to Court Clerk & defense lawyers.

JURISDICTION

This is a civil controversy, with diversity of citizenship of the parties. The amount in controversy exceeds the statutory minimum. The appeal statute is 28 U.S.C. Sec. 1254.

The defendants acting in conspiracy deprived appellant of his Constitutional rights to Due Process of Law & Equal Protection of the Laws, in civil proceedings in Oregon State Courts. Appellant unable to secure his rights in state courts, filed his actions in Federal Court for deprivation of his Fourteenth Amendment rights to Due Process of Law & Equal Protection of the Laws.

In the District Court action in Portland, Oregon, a puppet creation of the district court was used to invalidate an Act of Congress by means of custom, usage & subterfuge, thereby creating new causes of action involving the district court's illegal actions. The district court deprived Anderson of his rights to Due Process of Law & Equal Protection of the Laws

ordered by Congress in Exhibits 1A and 1B attached to this appeal.

Congress in the particular case ordered complete "FREEDOM OF CHOICE" for the parties, which the district court invalidated by means of custom and usage.

The district court never held any hearings in the action at any time, thereby depriving Anderson of the First Essentials of Due Process of Law. The ratification of those illegal district court acts by the U.S. Court of Appeals, broadened the basic claim of appellant to the use of unconstitutional procedures by the United States Courts.

With diversity of citizenship of the parties, the Erie V Tompkins ruling was the proper standard to use. In that category Oregon Revised Statute 43.220 is used, quote "Impeachment of judicial record. Any judicial record may be impeached & the presumption arising therefrom overcome by evidence of a want of jurisdiction, collusion between

the parties, or fraud in the party offering the record.

From the words of Exhibits 1A and 1B appellant's rights to FREEDOM OF CHOICE were ordered by Congress. Without that voluntary consent being given, the magistrate had no authority to act in the case & perform his illegal acts.

Therefore when Anderson objected to the lack of authority of the magistrate to order Anderson to perform the illegal acts ordered by the magistrate; under ORS 43.220, there was a definite lack of jurisdiction by the magistrate.

The endorsing of the illegal magistrate's acts by the district court without holding any hearings, was unconstitutional. The ratification of those illegal district court acts by the Court of Appeals enlarged the action. The acts of the district court & court of appeals were discrimination under color of law.

The Court of Appeals denied Anderson's appeal on June 19, 1986.

Anderson filed a petition for rehearing,

which was denied by the same judges on October 6, 1986.

Anderson filed a Notice of Appeal on October 14, 1986. Due to the many varieties of format for the Notices of Appeal, Anderson filed a revised version of the Notice of Appeal on November 6, 1986, with service by Certified mail on defendant's lawyers.

The Fifth and Fourteenth Amendments to the United States Constitution apply in this case.

CONSTITUTION PROVISIONS-STATUTES

Article VI. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Exhibit 1A is a copy of the brochure pre-

sented to Anderson by the District Court Clerk. Its title is self explanatory.

Congress in Exhibits 1A and 1B shows that persons using or not using those procedures, had absolute FREEDOM OF CHOICE to use or reject the procedures set by Congress.

> "There can be no question of the power of Congress thus to define & limit the jurisdiction of the inferior courts of the U.S." Lauf v E.G. Shinner & Co. 303 U.S. 323, 330.

It is apparent from that ruling & actions of Congress in creating Exhibits 1A and 1B, the acts were proper exercise of Congressional authority.

> "One cannot ascribe a specific meaning to the term "liberty" for it may encompass any form of freedom of action or choice which is accorded Constitutional recognition by the Court." The function of the Due Process Clause. 116 U. Pa. L. Rev. 1048.

Title 28, U.S.C. Section 636(c) is the statute involved & its use must be voluntary, by the parties to the controversy.

> "A fair trial in a fair tribunal is a basic requirement of Due Process." In re Murchison 348 U.S. 133, 136, 75 S.Ct. 623, 625

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, nor be deprived of life, liberty, or property, without due process of law; . . . .

Fourteenth Amendment: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. Sec. 1983. Civil Action for deprivation of rights.

42 U.S.C. Sec. 1985. Conspiracy to interfere with civil rights.

Appellant in his civil action demanded trial by jury. The anonymous calendar management committee is not an Article III, judgeship & by depriving appellant of his rights to trial by jury the committee acted beyond its legal jurisdiction, if it had any. The district court cannot give or donate its Article III powers to any type of fictitious group. The point to remember is with diversity of citizenship & the Erie v Tompkins ruling, the laws of Oregon are very relevant to the original state court action & also to this District Court action.

Oregon State Constitution, Article I, Section 17. Jury trial in civil cases. "In all civil cases the right of Trial by Jury shall remain inviolate."

Anderson was never accused of crime.

Anderson was never tried for crime.

Anderson was never convicted of crime.

It is obvious that any state court proceeding was civil in nature and procedure. Anderson demanded Trial by Jury, but was cheated out of it

by the conspiracy of defendants and State Court personnel. Defendant Carl Burnham jr., does not have authority to violate the inviolate provisions of the Oregon State Constitution. There is no person in Oregon who has authority to grant Burnham privilege to violate the inviolate. A copy of Burnham's oath as a lawyer, shows what he has promised to do.

> Oregon Revised Statute 42.300. Parties to written instrument not to deny facts recited therein. Except for the recital of a consideration, the truth of the facts recited from the recital in a written instrument shall not be denied by the parties thereto, their representatives or successors in interest by a subsequent title. That law does not give any room for alibis or excuses.

That law cited above, applies to each of the defendants, since they have all had to swear to use & obey the Oregon State Constitution.

They have all had to swear to use and obey the U.S. Constitution and laws, including the "FREEDOM OF CHOICE" shown by Exhibts 1A & 1B.

> "A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison 349 U.S. 133, 136, 75 S.Ct. 623, 625.

Anderson has objected to the discrimnination

by the District Court & the Court of Appeals in failing to hold any hearings in this case.

The District Court has in bad faith, wrongfully & unreasonably by default, allowed and encouraged its puppet creation, the anonymous calendar management committee to control the business of the court, and with that control the illegal acting committee has in reality performed the actions which are proper proceedings for Article III Judges.

The District Court has no authority to delegate its obligations and powers to any substandard group of persons.

There is no provision in the United States Constitution for Article III judges to create their own system of government and law by decree or rulings.

Appellant was deprived of his Constitutional rights to "Due Process of Law and Equal Protection of the Laws" by illegal acts of Oregon District Court and endorsement by the Ninth Circuit Court of Appeals.

STATEMENT OF THE CASE

The original case was based upon conspiracy by defendants to cheat Anderson out of his U.S. Constitutional rights, privileges, and immunities and his life's savings. Appellant was the victim in Oregon Courts. Being unable to secure his rights in Oregon Courts appellant filed his civil action in the United States District Court.

The district court using its puppet creation, an anonymous calendar management committee, had the committee arbitrarily impose a person they misrepresented as a qualified judge to handle the civil action, the bogus judge signed himself as a magistrate in one of his papers. Anderson was outraged and shocked. A dirty trick like that was possible in state court, BUT, in a Federal Court where truth is usually used in the proceedings, it was a ghastly crime. When the fraud became known to Anderson, he objected immediately to the district court.

The District Court Clerk sent copies of Exhibits 1A and 1B to Appellant, but Anderson never requested or accepted the use of the magistrate. Notwithstanding that fact the court imposed the bogus judge on Anderson. That bogus judge never held any hearings in the case. That of course deprived Anderson of the first essntials of Due Process of Law.

> In "Constitutional Law, 2 ed. by Nowak, Rotunda, & Young, p. 555, the authors in speaking of the essential elements of "Due Process of Law, include item (2) a neutral decision maker, (3) an opportunity to make an oral presentation to the decision maker, (4) an opportunity to present evidence or witnesses to the decision maker, (5) a chance to confront and cross examine witnesses or evidence to be used against the individual.

With no hearings having been held at any time by the District Court Judges, none of these basic safeguards were in operation.

> "Not only is a biased decision maker constitutionally unacceptable but "our system of laws has always endeavored to prevent the probability of unfairness." In re Murchison 349 U.S. 136.

One definite rejection of the use of the

bogus judge should be ample for any normal person. The district court kept pushing the bogus judge on to appellant.

> "Bar to appeal where party fails to file written objections to magistrate's report does not apply where party is not informed by magistrate that his objections must be filed within 10 days after service of copy of magistrate's report is made upon him." Deloney v Estelle (1982 CA5 Tex.) 679 F. 2d 372.

Appellant never received any notice of a 10 day time limit from the district court or the bogus judge.

The Court of Appeals members ignored previos rulings of the 9th Circuit Courts, regarding the imposition of magistrates.

> Alaniz v California Processors, Inc.(1982 CA9 Cal)690 F2d 717. Magistrate may exercise jurisdiction pursuant to 28 USCS Sec 636 (c)(1) only where he is specially designated to exercise such jurisdiction by district court or courts he served & where parties consent without coercion by judge or magistrate to magistrate's authority to hear case and enter judgment.

The bogus judge became upset when appellant refused the KANGAROO court proceedings of the bogus judge & the bogus judge's rulings, show that biased attitude.

The Court of Appeals members ignored the facts that the district court had never held any hearings in the case at any time. That fact shows discrimination by the district court & Court of Appeals against the appellant, Anderson.

Oregon Revised Statute 9.010 (2) in part, The Oregon State Bar has perpetual succession & a seal & it may sue and be sued.

United States v Oregon State Bar 385 F. Supp. 507 (1974) The Oregon State Bar was sued by the Federal Government. The U.S. showed the state bar was a state created monopoly & what the individual lawyers billed their customers for & got, they kept. The bar in common with all other state created monopolies tries to claim immunity for its illegal acts. The court didnot swallow the instrumentality hokum peddled by the Bar in that civil suit.

Garvin v Matthews 193 Wash. 152, 74 P.2d 990, 992. "The doctrine of "alter ego" does not create assets for or in corporation, but it simply fastens liability on the individual who uses the corporation merely as instrumentality in conducting his own personal business, and that liability springs from fraud perpetrated not on the corporation, but on third persons dealing with corporation."

Defendant Oregon State Bar being an inanimate creation cannot make any statements

altering or unbinding its binding rules that are supposed to apply equally to all defendants, all state bar members.

Defendant McEwen, a lawyer & state bar member, knew that he was incompetent to make & subscribe to his sworn affidavit, in as much his information was all based upon hearsay, & as in most cases of hearsay the statements do not agree with each other.

Appellant in his Complaint alleged the conspiracy between defendants, to cheat appellant out of his civil & Constitutional rights to Due Process of Law & Equal Protection of the Laws & Freedom of Choice.

> "No allegations of racial or class-based invidiously discrimnatory animus were required to establish cause of action under provision of this section barring conspiracies to interfere with administration of justice in federal courts. Kush v Rutledge, (1983) 103 S. Ct. 1483.

Appellant in his Complaint pointed out, the State of Oregon had no standards of meaning, practice or procedure of the words and phrases that were used to cheet appellant out

of his Constitutional rights, privileges & immunities,& his life's savings.

> A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning & differ as to its application, violates the first essentials of Due Process of Law. Connaly v General Const. Co. (1926) 269 U.S. 385

> "Not only does a vague statute run the risk of entrapping the innocent, it impermissibly delegates basic policy matters to police men, judges & juries on an ad hoc & subjective basis, with the attendant dangers of arbitrary & discrimnatory application. Grayned v Rockford (1972) 408 U.S. 104

The State of Oregon does not have & did not have any standards of meaning & practice and procedure for the vague term specific performance & from the above case citations, judges on an ad hoc subjective basis arbitrarily discriminated against appellant in the original state court proceedings & cheated appellant of his Constitutional rights to Due Process of Law and Equal Protection of the laws.

It is obvious with no standards of meaning or application, it would be impossible to apply "Due Process of Law."

THE ISSUES ARE SUBSTANTIAL

United States Constitution Article I, Section 1. All legislative powers herein granted shall be vested in a Congress of the United States.

United States Constitution Article VI, Section 2. This Constitution, and the Laws of the United States which shall be made in pursuance thereof; . . . shall be the Supreme Law of the Land; . . .

There is no question about the authority of Congress to pass 28 U.S.C. 636 (c).

Congress set standards of procedure to be used in applying of that law. Congress in Exhibits 1A and 1B, ordered that "FREEDOM OF CHOICE" was given to the people to use or not use a magistrate. Appellant Anderson refused to ask for or accept the use of any magistrate in the controversy. It is absurd for the district court to invalidate an Act of Congress by custom, usage & subterfuge. It is illegal & unethical.

United States Courts are supposed to be based upon & using truth in their proceedings. For the district court judges to misrepresent a magistrate as a qualified U.S. judge, shows bad faith & a lack of honesty by the individual judges.

Those judges have no authority to raise any questions regarding Congressional Acts, nor alter or deprive people of the benefits ordered by Congress.

This United States Supreme Court should not require any briefing or arguing on this appeal, since the Act of Congress is clear and this Supreme Court has the authority to order the district court judges to obey the laws passed by Congress.

Exhibits 1A and 1B were given to Anderson by the Oregon District Court Clerk, & the language used in those exhibits is clear & positive. The case, Alaniz v California Processors, Inc.,(1982 CA9 Cal.) 690 F2d 717 shows what the 9th Cir. Appeals Ct. decided.

CONCLUSION

The United States Constitution and laws stress the need for truth. All important executives & judges have to swear to an oath of office to act in accordance with that Constitution and those laws.

Congress had the authority to pass laws that regulated the procedures to be used in this civil case, all voluntary acts.

It is absurd & unethical for the puppet creation of the district court, the anonymous calendar management committee to act in defiance of Congress & impose that incompetent magistrate upon appellant.

For the fundamental reasons of laws passed by Congress being the Supreme Law of the Land, this Court should reverse the illegal actions performed below and grant this Appeal.

Respectfully submitted

Henry Anderson

Henry Anderson-Appellant
Pro se.